

Claimant argues the Board does not have jurisdiction on an appeal from a preliminary hearing to address the issue raised by respondent. Accordingly, claimant argues the appeal should be dismissed. In the alternative, claimant requests the Board to affirm the ALJ's Nunc Pro [sic] Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At the preliminary hearing held on March 4, 2004, the parties agreed to designate two doctors to provide authorized medical treatment. Compensability was not at issue. Instead, the remaining issue was whether claimant was entitled to temporary total disability compensation. The ALJ awarded claimant temporary total disability compensation.

The issue raised on appeal by respondent is limited to whether the ALJ erred in awarding claimant temporary total disability compensation. Claimant argues the Board does not have jurisdiction to address that issue. The Board agrees.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.¹ This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) (Furse 2000) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.²

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2) (Furse 2000). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

An ALJ has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Therefore, Judge Clark did not exceed his jurisdiction. Whether respondent could have accommodated claimant's restrictions and whether that would

¹ K.S.A. 44-551(Furse 2000).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

prevent claimant from receiving temporary total disability benefits is not an issue that is reviewable from a preliminary hearing order.

Accordingly, the Board concludes that it does not have jurisdiction at this juncture of the proceedings to review whether the ALJ erred in awarding claimant temporary total disability compensation.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁴

WHEREFORE, the Board dismisses the appeal, leaving the March 4, 2004 and March 5, 2004 Orders of Administrative Law Judge John D. Clark in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of April 2004.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
John A. Pazell, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a(a)(2) (Furse 2000).